FILE COPY

IN THE

Supreme Court of the United States

October Term, 1931

No. 411

GALVESTON WHARF COMPANY, et al,
Petitioners.

vs.

GALVESTON, HARRISBURG & SAN ANTONIO RAILWAY COMPANY, et al,
Respondents.

BRIEF OF AMERICAN GROCERY CO., et al

FRYER & CUNNINGHAM
of Counsel

RHODES S. BAKER,
Counsel

R. Dunman & Co., Printers

IN THE

Supreme Court of the United States

October Term, 1931

No. 411

GALVESTON WHARF COMPANY, et al,
Petitioners.

vs.

GALVESTON, HARRISBURG & SAN ANTONIO RAILWAY COMPANY, et al,
Respondents.

BRIEF OF AMERICAN GROCERY CO., et al

MAY IT PLEASE THE COURT:

American Grocery Company et al, plaintiffs in the trial court have adopted the petition for writ of certiorari and brief of the Galveston Wharf Company in support thereof.

In the trial court judgment was rendered in favor of American Grocery Company et al, against the Galveston Wharf Company, and the Galveston Wharf Company and American Grocery Company et al, plaintiffs in the trial court, appealed from the judgment, American Grocery Company et al, complaining of the trial court's action in not rendering judgment in their favor against the Mallory Steamship Company and in not rendering judgment in their favor against the Galveston, Harrisburg & San Antonio Railway Company. In the Court of Civil Appeals and in the Supreme Court of Texas the American Grocery Company et al, plaintiffs in the trial court, by proper assignments, exceptions and motions, as shown by the record in this cause, objected to the decisions of the state court holding that the American Grocery Company et al, plaintiffs in the trial court, were not entitled to recover against Mallory Steamship Company and the Galveston, Harrisburg & San Antonio Railway Company. In the Supreme Court of Texas, as shown by the record, American Grocery Company et al, plaintiffs in the trial court, duly filed their motion for rehearing, objecting to the holding of the Supreme Court to the effect that the shipment at the time of the fire was not in possession of the Mallory Steamship Company as a carrier, and if it was not in the pos-

session of such steamship company as a carrier, in holding that the American Grocery Company et al, were not entitled to recover against the Galveston, Harrisburg & San Antonio Railway Company.

STATEMENT OF THE CASE

A full and complete statement of the case given by the Galveston Wharf Company in the petition for writ of certiorari is hereby adopted in full.

SPECIFICATIONS OF ERROR

I.

The Supreme Court of Texas erred in finding and holding that possession of the shipment at the time of the fire had passed from the Mallory Steamship Company to the Galveston Wharf Company, and in holding that the plaintiffs in the trial court were not entitled to judgment against the Mallory Steamship Company.

II.

The Supreme Court of Texas erred in finding and holding that the Galveston Wharf Company held possession of the shipment at the time of the fire as a connecting carrier and not as an agent

of the carrier named in the bill of lading, and in holding that plaintiffs in the trial court were not entitled to recover against the Galveston, Harrisburg & San Antonio Railway Company.

ARGUMENT

POINT ONE

The argument of the Galveston Wharf Company in its brief in support of the petition for writ of certiorari upon the proposition that possession of the shipment had not passed from Mallory Steamship Company to Galveston Wharf Company is hereby adopted.

POINT TWO

The argument of the Galveston Wharf Company in its brief in support of the proposition that if it held the shipment at the time of the fire, it held it as an agent of the Galveston, Harrisburg & San Antonio Railway Company is hereby adopted.

It is conceded by all parties to the cause that the American Grocery Company et al, plaintiffs in the trial court are entitled to recover against some one of the defendants in the trial court. The American Grocery Co. et al, take the position

that they are entitled to recover from some one of the three defendants in the trial court, Mallory Steamship Company, and Galveston, Harrisburg & San Antonio Railway Company; that a correct holding should fix the liability in this case against the Mallory Steamship Company, in whose possession the shipment was at the time of the fire; but in any event, such plaintiffs in the trial court are entitled to judgment against some one of the defendants in the trial court above named.

WHEREFORE, American Grocery Company et al, plaintiffs in the trial court, pray that this honorable court enter judgment in their favor against the carrier in possession of said property at the time of the loss and damage by fire, and for such other relief as it may be entitled to.

Counsel for American Grocery Co. et al

FRYER & CUNNINGHAM
of Counsel.